



Changes to maternity leave and a ban on non-disclosure agreements

The President has signed the Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024 into law, with the parts relating to postponing maternity leave and NDAs requiring commencement orders to take effect.

12 November 2024

In a previous [briefing](#), we wrote about the General Scheme of a new Bill which was brought to Cabinet in order to introduce a new right to postpone maternity leave, where the employee is undergoing treatment for serious illness, and to introduce restrictions in respect of the use of non-disclosure agreements (**NDAs**).

The President has now signed the Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024 (the **Act**) into law. The parts of the Act relating to an employee's right to postpone maternity leave and the use of NDAs require commencement orders to bring them into force.

In this briefing, we outline the details of these changes and their implications.

Maternity leave changes

An employee will be able to postpone all or part of their maternity leave for a period of between five weeks and one year while receiving treatment for a serious health condition which requires necessary medical intervention.

A serious health condition is a condition which entails a serious risk to the life or health, including the mental health, of an employee and in order to address the risk, requires "necessary medical intervention" that is ongoing for a period of time.

The entitlement will be triggered by way of a notice from the employee to the employer, not later than two weeks before the date on which the postponement is due to commence, and which is accompanied by a medical certificate.

One further postponement may be availed of, provided the duration of both postponements together do not exceed one year.

It is noteworthy that there is a differentiation for mental health conditions. When it comes to mental health conditions, "necessary medical intervention" means *in-patient* hospital treatment. Mental health conditions are likely to constitute a disability within the meaning of the Employment Equality Acts and, as the Employment Equality Acts prohibit discrimination between people where one has a disability and the

other has a different disability, concerns were raised about this differentiation constituting a potential breach. As a result, an amendment was added to clarify that an employer's action, taken in compliance with the Act, shall not constitute unlawful discrimination on the grounds of disability.

Employers should review their maternity leave policies, with a view to tailoring these to accommodate the new right to postpone when it comes into effect.

Non-disclosure agreements (NDAs)

The Act amends the Employment Equality Acts to prohibit the use of NDAs in respect of allegations of discrimination, harassment, sexual harassment, or victimisation. Any agreement, or provision in an agreement, which purports to preclude the disclosure of information relating to the making of an allegation of discrimination, victimisation, harassment or sexual harassment and any action taken by the employer or employee in response to that allegation shall be null and void. The ban is subject to limited exceptions:

1. where an NDA is a term of a settlement arising out of a Workplace Relations Commission (**WRC**) mediation
2. an excepted NDA

What is an excepted NDA?

An employer may enter into an excepted NDA with an employee only where:

- the employee requests the employer to do so and
- prior to entering the agreement, the employee has received independent legal advice in writing from a legal practitioner

The employer must discharge the reasonable legal costs and expenses of the legal practitioner

The excepted NDA must fulfil an extensive list of criteria:

- be in writing
- be of unlimited duration, other than where the employee elects otherwise
- insofar as possible be in (i) clear language that is easily understood and (ii) a format that is easily accessible by the parties
- provide that the employee has a right to withdraw within 14 days
- include a provision that the agreement does not prohibit the employee making a disclosure to a defined list of people including, for example, the Gardaí (Irish police), or such individual or a member of such class of individuals, as may be specified in the agreement as a person to whom a disclosure may be made.

The employer must provide the employee with a copy of the executed agreement

When commenced, this new law will mean that all employment agreements, particularly any settlement, severance or compromise agreements will need to be tailored to ensure that they do not prohibit the disclosure of information relating to allegations of discrimination, harassment, sexual harassment or victimisation, or that they constitute an "excepted NDA". This new law undoubtedly has the potential to

add an extra layer of complexity to settlement or severance negotiations, which can already be an intricate process.

For further information in relation to this topic, please contact [Triona Sugrue](#), Knowledge Consultant, or any member of the [Employment team](#).

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